

No. 48943-1-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JOSHUA D. C. RHOADES,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

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I. ISSUE

- A. Did the trial court fail to consider Rhoades' present or future ability to pay prior to denying his motion to terminate the previously imposed legal financial obligations?

II. STATEMENT OF THE CASE

Joshua Rhoades has several older convictions in Lewis County Superior Court for which he filed motions to modify or terminate his legal financial obligations (LFO). CP 19-22, 29-33, 59-62, 65-69, 88-91, 94-98. Rhoades filed motions in 2014, but it does not appear any action was ever taken on these, and again in 2016. *Id.* Rhoades argued in his 2016 motions, which are identical, that the trial court did not take into account his individual ability to pay prior to ordering his legal financial obligations. CP 29-33, 65-69, 94-98.

In 99-1-00424-2 Rhoades was convicted of Assault in the Second Degree. CP 1. Rhoades was ordered to pay the following LFOs:

\$ 4,054.00 Restitution

\$ 500.00 Victim Assessment

\$ 110.00 Filing Fee

\$ 380.00 Court Appointed Attorney Fees

\$ 1,000.00 Lewis County Jail Fee

CP 3. A separate restitution order was entered, amending the restitution amount, adding an additional \$ 2,738.98. CP 9. A second amendment to the restitution was filed and entered, adding an additional \$ 3,528.61. CP 11. Jurisdiction was extended on June 25, 2009. CP 15.

In 00-1-00169-4 Rhoades was convicted of four counts of Vehicle Prowling in the Second Degree, Theft in the Second Degree, and Theft in the Third Degree. CP 38. Rhoades was ordered to pay the following LFOs:

\$ 500.00 Victim Assessment

\$ 110.00 Filing Fee

\$ 380.00 Court Appointed Attorney Fees

\$ 1,000.00 Lewis County Jail Fee

CP 40. A separate restitution order was entered for \$ 544.00. CP 46. Jurisdiction was extended on August 8, 2010. CP 52.

In 06-1-00613-0 Rhoades was convicted of Harassment (gross misdemeanor) and Unlawful Display of a Weapon. CP 75. Rhoades was ordered to pay the following LFOs:

\$ 500.00 Crime Victim Assessment

\$ 200.00 Filing Fee

\$ 800.00 Court Appointed Attorney Fees

\$ 1,000.00 Lewis County Jail Fee

\$ 210.00 Subpoena Service Fee.

CP 76. A separate order amending the judgment and sentence to include \$ 564.80 for investigative services. CP 78

Rhoades' motion regarding his LFOs was heard on May 3, 2016 during his resentencing on another matter. See RP. The trial court, after hearing all of the things Rhoades had done in prison to better himself, including a course to become a baker and college courses, denied Rhoades' motions. RP 6-7, 1-14, 20-21; CP 36, 71, 100. Rhoades timely appeals. CP 37, 72, 101.

The State will supplement the facts as necessary throughout its argument below.

III. ARGUMENT

A. THE TRIAL COURT INQUIRY OF RHOADES' ABILITY TO PAY HIS LEGAL FINANCIAL OBLIGATIONS WAS SATISFACTORY PRIOR TO DENYING THE MOTION TO WAIVE THE PREVIOUSLY IMPOSED LEGAL FINANCIAL OBLIGATIONS.

Rhoades argues the trial court failed to fully engage in an individualized inquiry regarding Rhoades' ability to make payments on his LFOs. Rhoades also argues the trial court erred in continuing to impose discretionary legal financial obligations on Rhoades due to his inability to pay. This is incorrect. The trial court is not required

to inquire about Rhoades' ability to pay non-discretionary legal financial obligations. The trial court's consideration was satisfactory given the facts presented and the inquiry of Rhoades. If this Court finds the trial court erred, the correct remedy is to remand this case back to the trial court for the judge to conduct the required inquiry.

1. Standard Of Review.

The determination to impose legal financial obligations by a trial court is reviewed by this Court under an abuse of discretion standard. *State v. Clark*, 191 Wn. App. 369, 372, 362 P.3d 309 (2015) (internal citation omitted). "A trial court abuses its discretion only when its decision is manifestly unreasonable or is based on untenable reasons or grounds." *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003), *citing State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997).

2. The Trial Court Does Not Have To Do An Individualized Determination For Mandatory Legal Financial Obligations.

Rhoades does not acknowledge the different classes of legal financial obligations present in his judgment and sentences. All three contain a victim assessment and filing fee, and two contain restitution, all which are non-discretionary, mandatory fees. CP 3, 11, 15, 40, 46, 76.

The statute in regards to the criminal filing fee is clear and unambiguous. RCW 36.18.020 states,

Clerks of superior courts shall collect the following fees for their official services:

(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, an adult defendant shall be liable for a fee of two hundred dollars.

The courts will not employ judicial interpretation if a statute is unambiguous. *State v. Steen*, 155 Wn. App. 243, 248, 228 P.3d 1285 (2010). “A statute is ambiguous when the language is susceptible to more than one interpretation. *Steen*, 155 Wn. App. at 248. When the reviewing court is interpreting a statute its “goal is to ascertain and give effect to the intent and purpose of the legislature in creating the statute.” *State v. Stratton*, 130 Wn. App. 760, 764, 124 P.3d 660 (2005) (citation and internal quotations omitted). The court looks to the plain language in the statute, the context of the statute, and the entire statutory scheme to determine the legislative intent. *Steen*, 155 Wn. App. at 248; *Stratton*, 130 Wn. App. at 764 (citations omitted). If the statute fails to provide a definition for a term then the courts look to the standard dictionary definition of the word. *Stratton*, 130 Wn. App. at 764. If the court finds that a statute is ambiguous,

“the rule of lenity requires that we interpret it in favor of the defendant absent legislative intent to the contrary.” *Id.* at 765.

The plain language of the statute is clear, the Clerk **shall** collect upon a conviction or plea of guilty the criminal filing fee, which is set in the amount of 200 dollars, as the defendant is liable for the fee. RCW 36.18.020(h). Shall is mandatory, not discretionary. This Court held the criminal filing fee to be mandatory. *State v. Lundy*, 176 Wn. App. 96, 102, 308 P.3d 755 (2013). Since *Lundy*, Division Three has also stated the criminal filing fee is mandatory. *State v. Stoddard*, 192 Wn. App. 222, 225, 366 P.3d 474 (2016); *Clark*, 191 Wn. App. at 374. The criminal filing fee is mandatory and it was properly imposed, regardless of Rhoades’ ability to pay.

Similarly, the victim penalty assessment is also a mandatory fee, and the court does not need to consider a defendant’s ability to pay when it imposes such a fee. *State v. Mathers*, 193 Wn. App. 913, 918-21, 376 P.3d 1163 (2016). Finally, there was restitution ordered in two of the cases. In case number 00-1-00169-4, restitution was ordered in the amount of \$544.00. CP 46. In case number 99-1-00424-2, restitution was ordered in the amount of \$10,321.59.¹

¹ This is by the State’s calculation based upon the Clerk’s papers.

Similar to the filing fee and victim penalty assessment, restitution is a mandatory legal financial obligation.

Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record.

RCW 9.94A.753(5). "The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount." RCW 9.94A.753(4).

Rhoades fails to acknowledge the criminal filing fee, victim penalty assessment, and restitution are mandatory legal financial obligations. These obligations were properly imposed, regardless of Rhoades' ability to pay.

3. The Trial Court's Inquiry Was Sufficient For An Individualized Determination That Rhoades Had The Ability To Pay The Discretionary Legal Financial Obligations Previously Imposed.

The only legal financial obligations left to consider are the jail recoupment fee, \$1,000 on each case, the court appointed attorney fees, which total \$1,560 for all three cases, the \$210 subpoena service fee, and a \$564.80 cost imposed for investigative services. CP 3, 40, 76, 78. These are the discretionary legal financial obligations imposed upon Rhoades in these three cases.

In *State v. Blazina* the Washington State Supreme Court determined the Legislature intended that prior to the trial court imposing discretionary legal financial obligations there must be an individualized determination of a defendant's ability to pay. *State v. Blazina*, 182 Wn.2d 827, 834, 344 P.3d 680 (2015). The Supreme Court based its reasoning on its reading of RCW 10.01.160(3), which states,

The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

Blazina, 182 Wn.2d at 837-38. Therefore, to comply with *Blazina*, a trial court must engage in an inquiry with a defendant regarding his or her individual financial circumstances. *Id.* The trial court must make an individualized determination about not only the present but future ability of that defendant to pay the requested discretionary legal financial obligations before the trial court imposes them. *Id.*

Rhoades asks this Court to reward his repeated criminal conduct by finding it makes him unable to pay his legal financial obligations in two ways. First, because Rhoades has committed a subsequent crime, and at the time of his request to the trial court to terminate/modify his legal financial obligations he is serving a prison

sentence, he is therefore unable to work and has no money. Brief of Appellant 7. Second, Rhoades argues due to his repeated felony convictions he is likely to never receive gainful employment. *Id.* 7-8. The State implores this Court to not reward someone for committing repeated felonies by reducing their previously ordered legal financial obligations.

Rhoades and his attorney spent a considerable amount of time at his resentencing hearing touting his numerous accomplishment while in prison, all the ways Rhoades has changed this time, and what Rhoades' plans for the future was when he was released from prison. See RP 6-10. Rhoades had completed cognitive behavioral change program, anger stress management program, getting it right program, changing thinking and behavior program, moral recognition therapy program, internalized oppression program; undoing realism - - racism; political science. RP 6. Rhoades had completed a baking college program and a special pastry program. *Id.* Rhoades had started a college math program, legal writing program, paralegal correspondence courses, and was on the waiting list for several other college courses. *Id.* Rhoades spent \$1,450 of his own money to take these courses to better himself. *Id.* Rhoades explained that he took the classes so he could change the

way he was thinking, they were not mandatory, he knew he could no longer keep coming back into the courtroom, and wanted to change his life and live differently for himself and his children. RP 10. At the time of the hearing Rhoades was 35 years of age. RP; CP 1.

The trial judge inquired if Rhoades had any physical or mental or emotional reason he could not work or hold down a job. RP 13. Rhoades replied, "No." RP 13. The trial judge referenced the conversation that occurred in regards to the resentencing when he denied Rhoades' LFO motion on the older cases. RP 20. Rhoades has the ability to work, even while in DOC. Rhoades has training to become gainfully employed once he is released from DOC.

The trial court inquiry was sufficient. This Court should affirm the imposition of the discretionary legal financial obligations. If this Court does find the inquiry inadequate, it should remand the case back to the trial court to make the proper inquiry.

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IV. CONCLUSION

The trial court conducted a sufficient inquiry regarding Rhoades' ability to pay the discretionary legal financial obligations imposed by the court. Therefore, this Court should affirm the trial court's denial of the motion. If this Court finds the inquiry insufficient, it should remand the case back to the trial court to make the proper inquiry.

RESPECTFULLY submitted this 12th day of January, 2017.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney



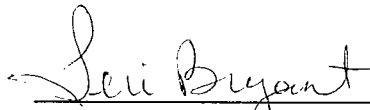
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**COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON, Respondent, vs. JOSHUA D. C. RHOADES, Appellant.	No. 48943-1-II DECLARATION OF SERVICE
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Ms. Teri Bryant, paralegal for Sara I. Beigh, Senior Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On January 12, 2017, the appellant was served with a copy of the **Respondent's Brief** by email via the COA electronic filing portal to Sean M. Downs, attorney for appellant, at the following email addresses: sean@greccodowns.com.

DATED this 12th day of January, 2017, at Chehalis, Washington.



Teri Bryant, Paralegal
Lewis County Prosecuting Attorney Office

LEWIS COUNTY PROSECUTOR

January 12, 2017 - 2:22 PM

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